

September 17, 2020, 4:30pm

**Franconia Zoning Board of Adjustment
Meeting Minutes**

ZBA Members Present: Peter Grote (Chair), Phil Krill (Vice-chair), Susan Retz, Brian Williams, Alicia Shambo, Keith Batchelder.

Others Present: Jenny Monahan, Allan Clark (Building Official), Dave Ovens (Applicant), Michael & Kim Cenkl (Property Owners)

A meeting and public hearings of the Franconia Zoning Board of Adjustment (ZBA) was held on Thursday, September 17, 2020, at the Franconia Town Hall.

The meeting was called to order at 4:31pm by Chair Peter Grote.

Public Hearing #1:

Application for a variance from Article III, Section 3 of the Franconia Zoning Ordinance filed on August 28, 2020 by Dave Ovens for Tax Map 28 Lot 97, 286 Mittersill Road, to allow for the construction of a foyer with reduced setbacks. Some members of the board visited the site on September 15, 2020.

The Chair opened the hearing and each member of the board introduced themselves. He asked if any of the members had a conflict of interest with the case before them and all board members said they have no conflict. The Chair confirmed that there was a quorum.

The Chair asked the applicant if there were any conflicts of interest with the board members and if he felt he would receive a fair hearing. The applicant confirmed there were no conflicts and that he felt he would receive a fair hearing.

As requested by the Chair, the applicant explained that the property owners would like to create a foyer by enclosing the existing outdoor staircase. The construction would further reduce the already reduced setback by an additional 6". He said the proposed foyer would be safer for the property owners as the stairs will be interior and they will not have to deal with snow and ice.

The Chair asked if the property owners have spoken with any of the abutters. Mr. and Mrs. Cenkl said they talked with one abutter and they did not have any objections. They have not seen the abutter on the other side. Jenny Monahan confirmed that all abutters were notified by Certified Mail.

Brian Williams asked if the proposed construction would create any additional water runoff. Building Official Allan Clark stated that he recommends that if the board decides to grant the variance, it would be subject to a review of the storm water runoff. Brian said the mitigation of water runoff would be his only objection to the project.

As there were no further comments from the members, the Chair began to review the five criteria for the granting of a variance. All members agreed that the project met the necessary criteria.

Keith Batchelder made a motion to accept the Variance with the provision that the drainage

runoff meets the building code requirement. The Chair seconded the motion with all voting in favor. **Motion passes.**

Public Hearing #2:

Application for a variance from Article III, Section 3 of the Franconia Zoning Ordinance filed on August 28, 2020 by Dave Ovens for Tax Map 28 Lot 97, 286 Mittersill Road, to allow for the construction of garage with reduced setbacks.

The applicant stated that the property owners would like to build a 24' x 24' garage. The structure meets sideline setbacks but the closest corner of the garage would be 34' from the center line of the road rather than the required 50'. The applicant said the garage would be a nice feature for the property owners as it would allow them year round use of their property.

After the applicant explained the project, there were no questions or discussion from the members so the Chair began the review of the criteria necessary to grant a Variance. All members agreed that the criteria were met.

Susan Retz made a motion to grant the variance. Brian Williams seconded the motion. All were in favor. **Motion passes.**

Public Hearing #3 (Continued hearing from August 20, 2020):

Applications for two variances from Article III, Sections 13 & 14 of the Franconia Zoning Ordinance filed on July 28, 2020 by Tim Clough for Tax Map 14 Lot 102, 115 Main Street to allow for the construction of a wireless internet tower with reduced setback and exceeding the height maximum.

Before this hearing was called to order, Building Official Allan Clark asked to be recognized and stated that he had recently learned that the town of Franconia has a Wireless Tower Ordinance, which was not known at the original hearing on August 20th. He said the applicant must start the process over with the new application.

The Chair disagreed with the Building Official and wanted to open the hearing to discuss the case but Brian Williams and Susan Retz objected to doing so in light of the newly discovered ordinance. Building Official Allan Clark said he takes responsibility for the error as he was unaware of the existence of the ordinance.

The Chair said he believes that NH RSA Chapter 12K Section 10 was applicable to the tower application. The Chair asked the applicant to explain what currently exists on his building at 115 Main Street and what the applicant plans to do. The applicant stated that he plans to move the satellite antenna that is on the corner of the building and erect a 44' tower in the rear of the property to replace it. He said he was not required to get a building permit for the satellite antenna but was required to get one for the tower.

The Chair said the existence of the satellite antenna that did not require a permit qualifies as an existing Personal Wireless Service Facility (PWSF) and therefore the applicant can modify it or collocate it without requiring anything but a building permit that is issued based on building codes only.

Building Official Allan Clark asked to be recognized and said the existing facility on the building is illegal as he did not go through the proper process for approvals. He also said the new tower

does not qualify as an extension or modification of the original facility as it will be a brand new tower, and the applicant needs to follow the towns Wireless Tower Ordinance process.

The Chair and the Building Official were at an impasse and Brian Williams interjected, referencing Section 12K-2(X): "*Collocation*" means the placement or installation of new PWSFs on existing towers or mounts,.. Brian said that the new tower has a new mount so is not a collocation. The existing facility is an antenna on top of the building and as the applicant is not adding to that it is a new tower that will need to follow the Wireless Tower Ordinance process. Alicia Shambo agreed.

There was additional discussion on the wording of Chapter 12-K:2(X) and whether or not the tower qualifies as a collocation. After a lengthy discussion, the board was in agreement that more research needed to be done before any decision could be made.

Building Official Allan Clark said the intent of 12-K was to allow towers to be modified somewhat to prevent the need for additional towers being erected, but in this case a new tower is being erected rather than extended or updated.

Keith Batchelder said the applicant's new Wireless Tower application will need to first go before the Planning Board rather than the Zoning Board of Adjustment, as stated in the town's ordinance. Building Official Allan Clark said it will come before the ZBA after the Planning Board to seek variances for the height and setbacks.

Keith Batchelder made a motion to table the application for the time being. The Chair seconded the motion. All were in favor. **Motion passes.**

The board chatted for a short time about the challenging nature of several cases that have come before them recently and that some additional training may be in order.

The minutes from August 20, 2020 were reviewed and approved as written on a motion by Susan Retz and a second by Phil Krill.

With no further discussion, the meeting was adjourned at 5:12 pm.

Respectfully submitted,

Jenny Monahan
Secretary, Franconia Zoning Board Adjustment